

10-1175-cv, 10-1201-cv, 10-1352-cv

DISH Network Corp. v. DBSD North America, Inc., Sprint Nextel Corp. v. DBSD North America, Inc.

# MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

## ORDER

(Argued in tandem: August 5, 2010)

Decided: December 6, 2010)

Docket Nos. 10-1175, 10-1201, 10-1352

Before: ROSEMARY S. POOLER,  
REENA RAGGI,  
GERARD E. LYNCH,  
*Circuit Judges.*

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IN RE: DBSD NORTH AMERICA, INCORPORATED,  
*Debtor.*

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DISH NETWORK CORPORATION,  
*Creditor-Appellant,*

v.

DBSD NORTH AMERICA, INCORPORATED,  
*Debtor-Appellee,*

AD HOC COMMITTEE OF SENIOR NOTEHOLDERS, OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS,  
*Creditors-Appellees.*

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SPRINT NEXTEL CORPORATION,  
*Appellant,*

v.

DBSD NORTH AMERICA, INC., AD HOC COMMITTEE OF SENIOR NOTEHOLDERS,  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS,  
*Appellees.*

MANDATE ISSUED ON 01/10/2011

1 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND  
2 DECREED that the judgment of the district court is AFFIRMED IN PART and REVERSED  
3 IN PART. The emergency stay is VACATED as moot, and the motion to lift that stay is  
4 DENIED as moot.

5 These consolidated appeals arise out of the bankruptcy of DBSD North America,  
6 Incorporated and its various subsidiaries. The bankruptcy court confirmed a plan of  
7 reorganization for DBSD over the objections of the two appellants here, Sprint Nextel  
8 Corporation (“Sprint”) and DISH Network Corporation (“DISH”). The district court  
9 affirmed.

10 On Sprint’s appeal, we conclude that (1) Sprint has standing to appeal, and (2) that  
11 the plan violated the absolute priority rule. On DISH’s appeal we find no error, and conclude  
12 (1) that the bankruptcy court did not err in designating DISH’s vote, (2) that, after  
13 designating DISH’s vote, the bankruptcy court properly disregarded DISH’s class for voting  
14 purposes, and (3) that the bankruptcy court did not err in finding the reorganization feasible.  
15 We therefore affirm in part, reverse in part, and remand to the district court with instructions  
16 to remand to the bankruptcy court for further proceedings.

17 An opinion will follow in due course.

18 Judge Pooler dissents from this order insofar as it reverses the judgment of the district  
19 court on Sprint’s appeal.

20 FOR THE COURT:  
21 Catherine O’Hagan Wolfe, Clerk of Court  
22

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O’Hagan Wolfe

UNITED STATES  
SECOND  
CIRCUIT  
COURT OF APPEALS  
Catherine O’Hagan Wolfe